

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION AT GREENEVILLE**

CENTURY SURETY COMPANY,

Petitioner,

Vs.

Docket No.: 2:13-cv-00055

**THOMCRETE CONSTRUCTION, INC.,
TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, and
JEFF BARGER INSURANCE d/b/a
BARGER INSURANCE GROUP,**

Respondents.

CONSENT ORDER OF JUDGMENT

Came this date the parties, jointly, by and through counsel, and moved this Court for Entry of a Consent Order of Judgment with regard to the above-styled matter. In support of the Motion, the parties stated that Century Surety Company issued a policy of insurance to Jeff Barger Insurance d/b/a Barger Insurance Group bearing policy number CCP772117 with effective dates of August 1, 2012 through August 1, 2013 along with a “retroactive date” of August 1, 2011. Jeff Barger Insurance d/b/a Barger Insurance Group (“Barger”) made demand for defense and indemnity under this policy of insurance arising out of a lawsuit filed on October 5, 2012 by Thomcrete Construction, Inc. against Travelers Casualty and Surety Company of America and Barger. The alleged actions/failures of Barger are to have occurred in January 2011, as set forth in the underlying tort litigation, prior to the “retroactive date” of the Century policy at issue in the present Declaratory Judgment Act. As such, the parties agree that no defense or

indemnity is owed to Barger for or arising out of the underlying tort litigation pending in the Chancery Court of Sullivan County, Tennessee bearing docket number K0038553(b). It is the agreement of the parties that no defense is owed because the alleged acts are to have occurred prior to the “retroactive date.” For purposes of the present Motion and Order, no other policy provisions are at issue. Therefore, the parties jointly moved for entry of judgment in the present action concluding that no such defense or indemnity is owed. The Motion being well-taken:

IT IS THEREFORE ORDERED that judgment is entered in favor of Century Surety Company with regard to its Declaratory Judgment Action filed herein bearing docket number 2:13-cv-00055;

IT IS FURTHER ORDERED that Century Surety Company owes no duty to defend or indemnify Jeff Barger Insurance d/b/a Barger Insurance Group under policy number CPP772117 with regard to the litigation pending in the Chancery Court of Sullivan County, Tennessee bearing docket number K0038553(b) styled Thomcrete Construction, Inc. versus Travelers Casualty and Surety Company of America, et al.

IT IS FURTHER ORDERED that no discretionary costs will be applied for or awarded.

Entered this the ____ day of _____, 2013.

/s/ Curtis L. Collier

JUDGE

Approved by:

R. Dale Thomas

R. DALE THOMAS (#013439)
BRADFORD D. BOX (#16596)
Attorneys for Century Surety Company
209 E. Main Street
P.O. Box 1147
Jackson, TN 38302-1147
(731) 423-2414

Michael G. McLaren by perm. R. Dale Thomas

MICHAEL G. McLAREN (#5100)
Black, McLaren, Jones, Ryland & Griffee, PC
Attorney for Travelers Casualty and Surety Company
of America
530 Oak Court Drive, Suite 360
Memphis, Tennessee 38117
(901) 762-0535

Cory Swainston by perm. R. Dale Thomas

JACK M. VAUGHN (#4248)
CORY SWAINSTON (# 29916)
Fuller and Vaughn
Attorneys for Thomcrete Construction, Inc.
215 East Sullivan Street
Kingsport, Tennessee 37660
(423) 246-8158

Rodney B. Rowlett, III by perm. R. Dale Thomas

D. BRUCE SHINE (#000815)
RODNEY B. ROWLETT, III (# 030330)
Law Office of D. Bruce Shine
Attorneys for Jeff Barger Insurance d/b/a
Barger Insurance Group
433 East Center Street, Suite 201
Kingsport, Tennessee 37660-4858
(423) 246-8433